

Applicant Initiated Interview Request Form

Application No.: 10/690,756First Named Applicant: Acharya, Amit P.Examiner: Michael E. KeeferArt Unit: 2454Status of Application: Pending**Tentative Participants:**(1) Jayme M. Torelli(2) Michael E. Keefer

(3) _____

(4) _____

Proposed Date of Interview: May 18, 2009Proposed Time: 1:00 pm AM/PM**Type of Interview Requested:**(1) Telephonic(2) Personal(3) Video Conference

Exhibit To Be Shown or Demonstrated:

 YES NOIf yes, provide brief description: Proposed Amendment**Issues To Be Discussed**

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) <u>101 Rej.</u>	<u>31-32</u>	<u>n/a</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(2) <u>112-2nd par. Rej.</u>	<u>30-32</u>	<u>U</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(3) <u>103(a) Rej.</u>	<u>30-32</u>	<u>N, A, B</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
(4) <u>--</u>	<u>--</u>	<u>--</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

 Continuation Sheet Attached**Brief Description of Argument to be Presented:**

Please see proposed amendment.

An interview was conducted on the above-identified application on _____.

NOTE: This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).

This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

/jayme m. torelli/

Applicant/Applicant's Representative Signature

Jayme M. Torelli

Typed/Printed Name of Applicant or Representative
62,735_____
Registration Number, if applicable_____
Examiner/SPE Signature

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
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5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

PROPOSED AMENDMENT- DO NOT ENTER

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**FIRST ACTION INTERVIEW PILOT PROGRAM
PROPOSED AMENDMENT**

Sir:

I. INTRODUCTORY COMMENTS

This paper is in response to the Pre-Interview Communication dated March 27, 2009.

II. PROPOSED AMENDMENT TO THE CLAIMS

The following amendments are proposed for discussion in a telephone interview:

1-29. (Cancelled)

30. (Currently amended) A method for analyzing a scalability of an application server, comprising:

 providing a test configuration, wherein the test configuration includes a component quantity generated using a component template, a jar quantity for containing the component quantity, a node quantity, a server quantity, a resource quantity, and resource types;

 creating an application based on the test configuration, wherein the application includes a quantity of components that match the provided component quantity and a quantity of jars that matches the provided jar quantity;

 deploying, installing, and starting the application on the application server, wherein the application server is implemented on a node, comprising a computerized device, that is part of a hierarchy of nodes that match the provided node quantity, and wherein the application is deployed using a deploy tool of the application server;

 creating a client program based on the test configuration, wherein the client program simulates use of the application by a quantity of clients that match the provided component quantity;

 running the client program against the application by conducting a database transaction;
 monitoring performance metrics during the deploying, installing, starting and running steps to verify the scalability of the application server, the monitoring comprising monitoring of:

 deployment metrics selected from the group consisting of an enterprise archive file size, a heap size, a memory consumption, a processor usage, and an application deploy time during

the deploying step;

monitoring installation metrics selected from the group consisting of a memory consumption, a processor usage, and an application install time during the installing step;

monitoring start metrics selected from the group consisting of a memory increase, a processor usage, and an application start time during the starting step; and

monitoring client metrics selected from the group consisting of a memory consumption, a processor usage, a transaction time, and an application run time during the running step; and

generating output based on the performance metrics, wherein the output includes a comparison of illustrates the performance metrics for the provided component quantity and the provided jar quantity, versus a potential performance metric for the application with at least one of a different quantity of components and a different quantity of jars.

31. (Currently amended) A computer-implemented system for analyzing a scalability of an application server, comprising:

at least one processing unit; computer including:

a memory operably associated with the at least one processing unit; and

a scalability analysis system storable in the memory and executable by the at least one processing unit, the scalability analysis system comprising:

a test configuration system for providing a test configuration, wherein the test configuration includes a component quantity generated using a component template, a jar quantity for containing the component quantity, a node quantity, a server quantity, a resource quantity, and resource types, and wherein the test configuration system provides a graphical user interface for inputting the test configuration;

an application generation system for creating an application based on the test configuration, wherein the application includes a quantity of components that match the provided component quantity and a quantity of jars that matches the provided jar quantity, wherein the application is deployed, installed and started on the application server, and wherein the application server is implemented on a node, comprising a computerized device, that is part of a hierarchy of nodes that match the provided node quantity, and wherein the application is deployed using a deploy tool of the application server;

a client program system for creating a client program based on the test configuration, and for running the client program against the application by conducting a database transaction, wherein the client program simulates use of the application by a quantity of clients that match the provided component count;

a metric monitoring system for monitoring performance metrics while the application is deployed, installed, and started and when the client program is run to verify the scalability of the application server, wherein the metric monitoring system monitors:

deployment metrics selected from the group consisting of an enterprise archive file size, a heap size, a memory consumption, a processor usage, and an application deploy time as the application is being deployed;

installation metrics selected from the group consisting of a memory consumption, a processor usage, and an application install time as the application is being installed;

start metrics selected from the group consisting of a memory increase, a processor usage, and an application start time as the application is being started; and

client metrics selected from the group consisting of a memory consumption, a

processor usage, a transaction time, and an application run time as the client program runs;

and

an output system for generating output based on the performance metrics, wherein the output includes a comparison of ~~illustrates~~ the performance metrics for the provided component quantity and the provided jar quantity, versus a potential performance metric for the application with at least one of a different quantity of components and a different quantity of jars.

32. (Currently amended) A ~~computer-readable program product stored on a recordable storage medium storing computer instructions [[,]] which when executed, enables a computer system to analyze[[s]] a scalability of an application server, the computer instructions program product comprising program code for:~~

providing a test configuration, wherein the test configuration includes a component quantity generated using a component template, a node quantity, a server quantity, a resource quantity, and resource types;

creating an application based on the test configuration, wherein the application includes a quantity of components that match the provided component quantity;

deploying, installing, and starting the application on the application server, wherein the application server is implemented on a node, comprising a computerized device, that is part of a hierarchy of nodes that match the provided node quantity, and wherein the application is deployed using a deploy tool of the application server;

creating a client program based on the test configuration, wherein the client program simulates use of the application by a quantity of clients that match the provided component quantity;

running the client program against the application by conducting a database transaction; monitoring performance metrics during the deploying, installing, starting and running steps to verify the scalability of the application server, the monitoring comprising monitoring of:

deployment metrics selected from the group consisting of an enterprise archive file size, a heap size, a memory consumption, a processor usage, and an application deploy time during the deploying step;

monitoring installation metrics selected from the group consisting of a memory consumption, a processor usage, and an application install time during the installing step;

monitoring start metrics selected from the group consisting of a memory increase, a processor usage, and an application start time during the starting step; and

monitoring client metrics selected from the group consisting of a memory consumption, a processor usage, a transaction time, and an application run time during the running step;

and

generating output based on the performance metrics, wherein the output includes a comparison of illustrates the performance metrics for the provided component quantity and the provided jar quantity, versus a potential performance metric for the application with at least one of a different quantity of components and a different quantity of jars.

III. PROPOSED REMARKS

Claims 30-32 are pending in this application. By this submission, proposed amendments to claims 30-32 are presented. Claims 1-29 have previously been canceled. Applicants are not conceding in this application that those claims are not patentable over the art cited by the Examiner, as the presently proposed claim amendments are only for facilitating expeditious prosecution of the claimed subject matter.

Rejections under 35 U.S.C. § 101

In the Pre-Interview Communication, claims 31 and 32 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claim 31 is rejected as allegedly being software per se, and claim 32 is rejected as comprising a carrier wave.

Applicants propose an amendment to claim 31, reciting “a computer-implemented system for analyzing a scalability of an application server, comprising: at least one processing unit; a memory operably associated with the at least one processing unit; and a scalability analysis system storable in the memory and executable by the at least one processing unit, the scalability analysis system comprising...” Applicants submit that claim 31 as amended is clearly not software per se, as it recites physical articles of manufacture such as “a computer-implemented system,” “at least one processing unit,” and “a memory.” Support for these features may be found in at least FIG. 2 and paragraphs [0021]-[0022].

Applicants propose an amendment to claim 32, reciting “a computer-readable storage medium storing computer instructions which when executed, enables a computer system to analyze a scalability of an application server, the computer instructions comprising...” As such, Applicants submit that claim 32 does not merely recite a carrier wave, and claims statutory subject matter. Support for these features may be found in at least paragraphs [0022] and [0033].

Accordingly, Applicants submit that all grounds of rejection under § 101 would be obviated by entry of the proposed amendments.

Rejections under 35 U.S.C. § 112, 2nd paragraph

In the Pre-Interview Communication, claims 30-32 are rejected under 35 U.S.C. § 112, 2nd paragraph, as being allegedly unclear as to the difference between the claim terms *deploying* and *installing*.

Applicants submit that the verb “deploy” has more than one definition. Although it may be defined as “the process of installing software into an operating environment” as asserted by the Office, its plain meaning may include one of the following definitions: “to spread out (troops) so as to form an extended front or line” (military), to arrange in a position of readiness, or to move strategically or appropriately,” “to spread out strategically or in an extended front or line,” or “to come into a position ready for use” (Dictionary.com, “deploy,” *available at* <http://dictionary.reference.com/search?db=dictionary&q=deploy>). Both of the specification and the language of claims 30-32 clearly contemplate that deployment does not include “installing” the application, but rather, that installation is a separate step. Paragraph [0029] discloses that

“Specifically, during the deployment of the application, metric monitoring system 56 will monitor deployment metrics such as enterprise archive (EAR) file size before and after deployment, heap size, memory consumption, processor usage, application deploy time, etc. During the installation of the application, installation metrics such as memory consumption, processor usage, application install time, etc. will be monitored.”

Accordingly, Applicants submit that it is clear that the plain meaning of “deploy[ing],” e.g., putting in a position ready for use, was intended in the claim language. The terms “deployment” and “installation” are separately discussed in the specification, and it is clearly contemplated that they can be quantified using separate metrics as stated in the passage above. Withdrawal of the rejection is therefore

respectfully requested.

Rejections under 35 U.S.C. § 103(a)

In the Pre-Interview Communication, claims 30-32 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over George Friedman (US Pat. 6,993,747, hereinafter, “Friedman”), Nabil A. Abu El Ata (US Pat. 6,311,144, hereinafter, “Abu El Ata”), and Moden, *et al.* (WO 1997/44729, hereinafter, “Moden”).

Applicants submit that proposed combination of Friedman, Abu El Ata, and Moden does not teach the amended feature of “providing a test configuration, wherein the test configuration includes a component quantity generated using a component template, a jar quantity for containing the component quantity, a node quantity, a server quantity, a resource quantity, and resource types” (claim 30), as none of the cited references recite specifying “a jar quantity for containing the component quantity.”

Support for this amendment may be found in the specification in at least paragraphs [0028] and [0031].

Applicants further submit that the proposed combination of Friedman, Abu El Ata, and Moden does not teach the amended feature of “generating output based on the performance metrics, wherein the output includes a comparison of the performance metrics for the provided component quantity and the provided jar quantity, versus a potential performance metric for the application with at least one of a different quantity of components and a different quantity of jars” (claim 30). Support for this amendment may be found in the specification in at least paragraphs [0028] and [0031]. Abu El Ata, on which the Office relies to teach the potential performance metrics, does not teach generating output including “a comparison of the performance metrics for the provided component quantity and the provided jar quantity and a potential performance metric...” Instead, Abu El Ata teaches comparison of two or more “potential” performance metrics.

Applicant asserts that the above arguments apply similarly to independent claims 31 and 32. If

the Examiner believes that anything further is necessary prior to conducting the First Action Interview, the Examiner is requested to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

/jayme m. torelli/
Jayme M. Torelli
Reg. No. 62,735

Dated: April 23, 2009

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